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No. 87-1167

Supreme Court, U.S.

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IN THE
Supreme Court of the United States
OCTOBER TERM, 1987

PRICE WATERHOUSE,
Petitioner,

v.

ANN B. HOPKINS,
Respondent.

On Writ of Certiorari to the United States Court of Appeals
for the District of Columbia Circuit

BRIEF FOR *AMICUS CURIAE*
AMERICAN PSYCHOLOGICAL ASSOCIATION
IN SUPPORT OF RESPONDENT

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**BRIEF FOR *AMICUS CURIAE*
AMERICAN PSYCHOLOGICAL ASSOCIATION
IN SUPPORT OF RESPONDENT**

INTEREST OF *AMICUS CURIAE*

The American Psychological Association ("APA"), a voluntary nonprofit, scientific, and professional organization with more than 70,000 members, has been the major association of psychologists since 1892. Among APA's major functions are the improvement of research methods, the dissemination of information regarding human behavior, and, as reflected in its Bylaws, the "advance[ment] of psychology as a science and profession."

APA contributes *amicus* briefs only where it has special knowledge to share with the Court. APA regards this as one of those cases. Psychologists have generated almost all the research on sex stereotyping, the single most important basis on which the courts below found the petitioner to have violated respondent's civil rights. APA wishes to inform this Court of scientific thought regarding stereotyping, particularly as it affects judgments of women in work settings. The APA has participated as *amicus* in many cases in this Court involving social science issues, including *Watson v. Fort Worth Bank & Trust*, No. 86-6139 (1988) (validation of subjective personnel evaluation devices); and *Lockhart v. McCree*, 476 U.S. 162 (1986) ("conviction-proneness" of "death-qualified" juries).

Petitioner and respondent have consented to the filing of this *amicus* brief.

INTRODUCTION AND SUMMARY OF ARGUMENT

The question before this Court is whether, in cases brought under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, where the plaintiff has satisfied the trier of fact that intentional discrimination affected the defendant's employment decision, the plaintiff must

also prove that the decision would have been made in her favor absent discrimination. Because the crucial finding of discrimination in this case was grounded on direct evidence that the employer's selection process "was impermissibly infected by stereotypical attitudes towards female candidates," *Hopkins v. Price Waterhouse*, 825 F.2d 458, 468 (D.C. Cir. 1987), the parties have focused a significant degree of attention on the issue of sex stereotypes. APA will leave it to them to argue the merits of the question presented but insofar as that question may be determined by the underlying issues of the scientific trustworthiness of the concept of sex stereotyping, APA wishes to inform this Court of the nature and validity of the concept and of the ways in which it may have "played a significant role," *id.* at 469, in the petitioner-employer's decision.

To convince this Court that the opinions below were erroneous, the petitioner consistently disparages sex stereotyping and the testimony of the social science expert, Susan Fiske, Ph.D., who appeared on behalf of Ms. Hopkins.¹ At best, petitioner concedes that the partners' comments at issue "might conceivably be taken as indicating that stereotypical thinking was sometimes present

¹ For example, petitioner places the term sex stereotyping within quotations, falsely implying that it is neologistic or unaccepted. See, e.g., Brief for Petitioner at 2. Petitioner characterizes as an "amorphous proposition" the court of appeals finding that the employer discriminated against the employee because of "stereotypical attitudes," *id.* at 14, and claims that the finding was derived from "intuitions about unconscious sexism—discernible only through an 'expert' judgment. . . ." *Id.* at 16-17. Petitioner seeks to discredit Dr. Fiske's testimony by labeling it as "gossamer evidence," *id.* at 19, and "intuitively divined." *Id.* at 40. It claims her conclusions were faulty because she never met Hopkins and only reviewed the partners' evaluations of her. *Id.* at 13. See also, *id.* at 19, 42. In sum, petitioner accuses the lower courts of basing a finding of intentional discrimination on "a chain of intuitive hunches about 'unconscious' sexism" which "were, in turn, magically transformed into evidentiary 'facts' by a shift in the burden of persuasion." *Id.* at 41.

'in the air' at Price Waterhouse" *Id.* at 45. But, petitioner's argument is that any finding of intentional sex discrimination is merely based on the peculiar and eccentric judgments of a purported expert who was inclined to discover sex stereotyping whether or not it actually existed in the minds and conduct of the partners at Price Waterhouse.²

Petitioner's view is reminiscent of the now indefensible position in *Plessy v. Ferguson*, 163 U.S. 537 (1896), that feelings of inferiority expressed by blacks as a result of racial segregation were evoked "solely because the colored race chooses to put that construction upon it." *Id.* at 551. Almost 100 years later, petitioner essentially asks

² Of course, petitioner is now barred from challenging the qualifications of Dr. Fiske or the admissibility of the subject matter upon which she testified. The trial court stated that Dr. Fiske was a "well qualified expert, who has done extensive research and study in the field of stereotyping." 618 F. Supp. 1109, 1117 (D. D.C. 1985). The court of appeals said, "To the extent that Price Waterhouse believes Dr. Fiske lacked necessary information, the firm is in fact quarrelling with her field of expertise and the methodology it employs. Defendant, however, failed to challenge the validity of Dr. Fiske's discipline at trial and disavows any such challenge here." 825 F.2d 458, 467 (D.C. Cir. 1987). Nevertheless, *amicus* believes petitioner's claim that Dr. Fiske's testimony lacked validity because she did not personally interview Ms. Hopkins is scientifically naive and irrelevant. Petitioner confuses the work of research psychologists like Dr. Fiske with that of clinical psychologists who use interviews and other assessment devices to arrive at a diagnosis of a patient. The issue about which Dr. Fiske was asked to testify concerned the presence *vel non* of discriminatory stereotyping at Price Waterhouse, not the mental status of Ms. Hopkins. The proper focus, then, was on the conduct of petitioner's partners, reflected in their evaluations. Dr. Fiske brought precisely that focus when she evaluated the conditions at Price Waterhouse that evoke stereotyping and the judgments of its partners in light of the research literature on stereotyping. In any event, petitioner should have availed itself of the rules of evidence, see Fed. R. Evid. 702-705, and case law, e.g., *Frye v. United States*, 293 F.2d 1013 (D.C. Cir. 1923), at the trial level if it wanted to lodge the challenges it now makes here.

this Court to rule that any discrimination respondent experienced was largely, if not completely, due to her distorted perception of the conduct of her employers. That view is not supported by the extensive research literature on sex stereotyping, much of it in employment settings. Petitioner's persistent attack on the finding of the courts below concerning Dr. Fiske and on the subject matter on which she testified exposes a lack of sophistication and knowledge about the nature of scientific research in general and sex stereotyping in particular. APA hopes to provide a corrective to this attack.

The five decades of research on sex stereotyping is generally accepted within the scientific community as judged by commonly acknowledged criteria. Part I. This research indicates that stereotyping is part of the normal psychological process of categorization that under pertinent conditions, can lead to inaccurate generalizations about individuals often transformed into discriminatory behavior. Sex is a common basis for faulty categorizations, of which sex stereotypes are the product. The literature on sex stereotypes shows that people characterize women in a manner that undermines judgments about their competence. Evaluation of women's work performance is often attributed to factors other than ability, detrimentally affecting organizational rewards and career progress. In particular, women are likely to be penalized, especially when they act in ways perceived as violating sex-related expectations. Thus, sex stereotyping has a demonstrably negative and discriminatory effect on women in work settings. Part II.

Psychologists have identified the conditions that promote such discriminatory stereotyping in work settings. Those conditions were all present in petitioner's place of employment. Part III. Discriminatory stereotyping, however, can be prevented by adopting such methods as providing evaluators pertinent information, focusing attention on that information, and creating motivational in-

centives that indicate consensual disapproval of stereotyping. Petitioner failed to employ any of those methods. Part IV. *Amicus* concludes that sex stereotyping existed in petitioner's employment setting, was transformed into discriminatory behavior, and played a significant role in the decision of petitioner not to select respondent as a partner of the firm.

ARGUMENT

I. EMPIRICAL RESEARCH ON SEX STEREOTYPING HAS BEEN CONDUCTED OVER MANY DECADES AND IS GENERALLY ACCEPTED IN THE SCIENTIFIC COMMUNITY

The extent to which a body of social science evidence has gained general acceptance within the scientific community is critical to its acceptance by the judicial system. See Monahan & Walker, *Social Authority: Obtaining, Evaluating, and Establishing Social Science in Law*, 134 U. PA. L. REV. 477 (1986); Melton, *Bringing Psychology to the Legal System: Opportunities, Obstacles, and Efficacy*, 42 AM. PSYCHOLOGIST 488 (1987). Although no uniform standard determines general acceptance of the status of research in the social or natural sciences,³ acceptability can be ascertained by the application of several evaluative criteria.⁴ The quality of empirical re-

³ See, e.g., Black, *Evolving Legal Standards for the Admissibility of Scientific Evidence*, 239 SCIENCE 1508 (1988); Giannelli, *The Admissibility of Novel Scientific Evidence: Frye v. United States, a Half-Century Later*, 80 COLUM. L. REV. 1197 (1980). See generally *Proposals for a Model Rule on Admissibility of Scientific Evidence*, 115 F.R.D. 84 (1987).

⁴ The use of such criteria for evaluating social science research has been proposed by legal scholars trained in social science methodology and the uses and misuses of social science research by the courts. See, e.g., W. LOH, *SOCIAL RESEARCH IN THE JUDICIAL PROCESS* (1984); J. MONAHAN & L. WALKER, *SOCIAL SCIENCE IN LAW* (1985); Bersoff, *Social Science Data and the Supreme Court: Lockhart as a Case in Point*, 42 AM. PSYCHOLOGIST 52 (1987);

search and, by implication, its general acceptance in the scientific community, is established by the use of valid research methods, its support by a body of other research, its scrutiny through critical peer review in the relevant scientific community, and subsequent publication of that research in respected journals.

By far, the most important criterion is validity. Social scientists distinguish between two kinds of research validity—internal and external. See E. LIND, J. SHAPARD & J. CECIL, *EXPERIMENTATION IN THE LAW: REPORT OF THE FEDERAL JUDICIAL CENTER ADVISORY COMMITTEE ON EXPERIMENTATION IN THE LAW* (1981). Internal validity “refers to the trustworthiness of a piece of research on its own terms. . . . To have high validity, a study must rule out, or control for, competing hypotheses that may account for an observed state of affairs.” SOCIAL AUTHORITY, *supra* note 4, at 502. Scientific research is authoritative to the extent that it has employed research designs that minimize various known threats to internal validity. External validity refers to the extent to which research can be generalized across different people, different settings, and over time. The more often a study confirms prior research or is confirmed by subsequent research and the more often a body of research with different methodologies supports a common proposition, the less likely it is that chance fluctuations in the data, overlooked variables, or methodological anomalies account for the findings.

Thus, just as the law accords greater respect to legal principles enunciated by many different courts in different jurisdictions, so too does the trustworthiness and ac-

Colquitt, *Judicial Use of Social Science Evidence at Trial*, 30 ARIZ. L. REV. 51 (1988); Monahan & Walker, *Social Authority: Obtaining, Evaluating, and Establishing Social Science in Law*, 134 U. PA. L. REV. 477 (1986) [hereinafter SOCIAL AUTHORITY]; Monahan & Walker, *Social Science in Law: A New Paradigm*, 43 AM. PSYCHOLOGIST 465 (1988).

ceptance of scientific research increase as different studies yield essentially convergent results about the phenomenon at issue.

In this context one can evaluate the general acceptance of research on stereotyping in the scientific community. The scientific study of social stereotypes⁵ has been an active field of inquiry for over five decades. See, e.g., Katz & Braly, *Racial Stereotypes of One Hundred College Students*, 28 J. ABNORMAL & SOC. PSYCHOLOGY 280 (1933). Stimulated by a now classic treatise, see G. ALLPORT, *THE NATURE OF PREJUDICE* (1954), psychologists have examined the cognitive, motivational, and behavioral foundations of stereotyping.⁶ Research on sex stereotypes⁷ has been an integral part of this voluminous literature:⁸

⁵ The term “stereotype” was used in the printing trade in the early 1800’s but did not become part of the mainstream of social scientific thought until 1922. W. LIPPMAN, *PUBLIC OPINION* (1922).

⁶ For reviews, see, e.g., J. DOVIDIO & S. GAERTNER, *PREJUDICE, DISCRIMINATION, AND RACISM* (1986); S. FISKE & S. TAYLOR, *SOCIAL COGNITION* (1984); Ruble & Ruble, *Sex Stereotypes in IN THE EYE OF THE BEHOLDER: CONTEMPORARY ISSUES IN STEREOTYPING* (A. Miller ed. 1982) [hereinafter Ruble & Ruble]; Ashmore & Del Boca, *Conceptual Approaches to Stereotypes and Stereotyping in COGNITIVE PROCESS IN STEREOTYPING AND INTERGROUP BEHAVIOR 1* (D. Hamilton ed. 1981); Cauthen, Robinson & Krauss, *Stereotypes: A Review of the Literature 1926-1965*, 84 J. SOC. PSYCHOLOGY 103 (1971).

⁷ Although psychologists distinguish “sex” as biological and “gender” as the associated psychological states, Deaux, *Sex and Gender*, 36 *Ann. Rev. Psychology* 49, 51 (1985) [hereinafter *Sex and Gender*], the former will be used herein, consistent with the courts below.

⁸ In the psychological literature between 1967 and 1982, there were 12,689 articles published on human sex differences, 3,621 articles on sex roles generally and 1,765 articles on sex role attitudes specifically. *Id.* at 50. A computer-assisted bibliographic search conducted for this brief found that from 1974-1987, 1,564 articles were published on stereotypes, with over 20% pertaining to sex.

Beliefs about the sexes have a history at least as long as the actual study of those differences, and perhaps longer if one includes statements by those philosophers and social commentators who predated the development of modern psychology.⁹ The ways in which people think about women and men can be, and have been, considered from a variety of perspectives, from broad-based attitudinal surveys about the roles of women and men to specific evaluations of individual male and female performance.

Sex and Gender, *supra* note 7, at 65.

Early research generated many empirical demonstrations that different expectations for female and male behavior produce different and unequal judgments about men's and women's performance.¹⁰ Research conducted in the past 15 years has systematically revealed the cognitive structure of sex stereotypes and the psychological processes by which they influence behavior, including behavior in the workplace.¹¹ See Parts II-III, *infra*.

⁹ For a brief history of the philosophical and religious attitudes people have harbored about women, see Ruble & Ruble *supra* note 6 at 188-193.

¹⁰ See, e.g., O'Leary, *Some Attitudinal Barriers to Occupational Aspirations in Women*, 81 *Psychological Bull.* 809 (1974); Rosenkrantz, Vogel, Bee, Broverman, *Sex-role Stereotypes and Self-Concepts in College Students*, 32 *J. CONSULTING & CLIN. PSYCHOLOGY* 287 (1968) [hereinafter *Sex-role Stereotypes*]; Pheterson, Kiesler & Goldberg, *Evaluation of the Performance of Women as a Function of their Sex, Achievement and Personal History*, 19 *J. PERSONALITY & SOC. PSYCHOLOGY* 114 (1971).

¹¹ See, e.g., A. EAGLY, *SEX DIFFERENCES IN SOCIAL BEHAVIORS A SOCIAL-ROLE INTERPRETATION* (1987); Deaux & Kite, *Gender and Cognition in WOMEN & SOCIETY: SOCIAL SCIENCE RESEARCH PERSPECTIVES* 92 (B. Hess & M. Ferree eds. 1986); Taylor, *A Categorization Approach to Stereotyping in COGNITIVE PROCESSES IN STEREOTYPING AND INTERGROUP BEHAVIOR* 83 (D. Hamilton ed. 1981) [hereinafter Taylor]; Heilman, *Sex Bias in Work Settings: The Lack of Fit Model* in 5 *RESEARCH IN ORGANIZATIONAL BE-*

Research on sex stereotypes clearly satisfies the essential criteria for general scientific acceptance.¹² As *amicus* will show, researchers on sex stereotypes have used an impressive diversity of empirical methodologies (including surveys and laboratory and field experiments), qualitative and quantitative measurement strategies in a variety of research settings (including the workplace), with a variety of subject populations (including managers who make selection decisions), to examine how people think about women and men and how their perceptions influence social behavior.¹³ This body of research yields an internally valid pattern of consistent, mutually confirmatory findings as well as considerable convergence across time, about the judgmental and behavioral conse-

HAVIDOR 269 (B. Staw & L. Cummings ed. 1983) [hereinafter *Sex Bias in Work Settings*].

¹² In addition to the crucial criteria of internal and external validity, for support that research on sex stereotyping has withstood scrutiny by anonymous expert peer reviewers of journal articles, see *supra* nn. 6, 8, 10-11, & 13 as well as Parts II-IV, *infra*. The applicability of research on sex stereotyping to legal issues is self-evident as this case makes clear. See also Taub, *Keeping Women in Their Place: Stereotyping Per Se as a Form of Employment Discrimination*, 21 *B. C. L. REV.* 345, 349-361 (1980) (reviewing research).

¹³ See, e.g., S. BASOW, *GENDER STEREOTYPES: TRADITIONS AND ALTERNATIVES* (1986); C. TAVRIS & C. OFFIR, *THE LONGEST WAR: SEX DIFFERENCES IN PERSPECTIVE* (1977); Rosen, *Career Progress of Women: Getting In and Staying In* in *WOMEN IN THE WORK FORCE* 70 (H. Bernardin ed. 1982) [hereinafter *Career Progress of Women*]; Ruble & Ruble, *supra* note 6; Spence, Deaux, & Helmreich, *Sex Roles in Contemporary American Society* in 2 *HANDBOOK OF SOCIAL PSYCHOLOGY* 149 (G. Lindzey & E. Aronson eds. 1985); SEX AND GENDER, *supra* note 7; Nieva & Gutek, *Sex Effects on Evaluation*, 5 *ACAD. OF MGMT. REV.* 267 (1980) [hereinafter *Sex Effects*]; Wallston & O'Leary, *Sex and Gender Make a Difference: The Differential Perceptions of Women & Men*, 2 *REV. OF PERSONALITY AND SOC. PSYCHOLOGY* 9 (1981).

quences of sex stereotypes, including in the employment setting.¹⁴

II. STEREOTYPING UNDER CERTAIN CONDITIONS CAN CREATE DISCRIMINATORY CONSEQUENCES FOR STEREOTYPED GROUPS, INCLUDING WOMEN

A. Stereotypes About Women Shape Perceptions About Women's Typical and Acceptable Roles in Society.

Stereotypes result from the normal cognitive process of categorization. Individuals form stereotypic beliefs about groups of people in much the same way they generalize about any aspect of their environment. "Stereotyping can be a work-saving, efficient cognitive enterprise, serving to simplify and organize the complex world we encounter." *Sex Bias in Work Settings*, *supra* note 11, at 271. "The leap from categorization to stereotyping . . . is a small one. Stereotypes, both benign and pernicious, evolve to describe categories of people." Taylor, *supra* note 11, at 84. Stereotypes, then, are "a set of attributes ascribed to a group and imputed to its individual members simply because they belong to that group." *Sex Bias in Work Settings*, *supra* note 11, at 271. Stereotypes "are not necessarily any more or less inaccurate, biased, or logically faulty than are any other kinds of cognitive generalizations," Taylor, *supra* note 11, at 84, and they need not inevitably lead to discriminatory conduct.

¹⁴ This Court has acknowledged that sexual stereotypes exist and can affect employment decisions. See, e.g., *City of Los Angeles Dept. of Water & Power v. Manhart*, 435 U.S. 702, 707 (1978):

It is now well recognized that employment decisions cannot be predicated on mere "stereotyped" impressions about the characteristics of males and females. Myths and purely habitual assumptions about a woman's inability to perform certain kinds of work are no longer acceptable reasons for refusing to employ qualified individuals, or for paying them less.

Accord, *Cty. of Washington v. Gunther*, 452 U.S. 161, 180 (1981) quoting *Sprogis v. United Air Lines, Inc.*, 444 F.2d 1194, 1198 (7th Cir. 1971): "In forbidding employers to discriminate against

"The problem is that stereotypes about groups of people often are *overgeneralizations* and are *either inaccurate or do not apply to the individual group member in question*." *Sex Bias in Work Settings*, *supra* note 11, at 271 (emphasis in original). That is because a categorization can lead to oversimplification and distortion, maximizing perceived differences between social groups and minimizing differences within them. Once an individual is classified as a member of a social group, perceptions of that group's average or reputed characteristics, and perceptions of behavior based on those characteristics, are readily relied on by those doing the classifying. It then becomes more difficult for the classifier to respond to the other person's own particular characteristics, making accurate, differentiated, and unique impressions less likely. In such instances, people tend to perceive members of the other group as all alike or to expect them to be all alike, which they never are.¹⁵ For example, even when behavior is held constant in carefully controlled laboratory conditions, males are seen as more influential, more confident, and somewhat more deserving of respect than women, perceptions consonant with sex stereotypes. See *Categorical Bases*, *supra* note 15.

The category in which an individual is placed can have significant consequences because the stereotypic beliefs associated with the category create the foundation for

individuals because of their sex, Congress intended to strike at the entire spectrum of disparate treatment of men and women resulting from sex stereotypes . . . which have plagued women in the past."

¹⁵ This process, "categorical responding," is a major component of stereotyping. See, e.g., Wilder, *Perceiving Persons as a Group: Categorization and Intergroup Relations in COGNITIVE PROCESSES IN STEREOTYPING AND INTERGROUP BEHAVIOR* 213 (D. Hamilton ed. 1981). The phenomenon is illustrated by such comments as "they all look alike to me" or "I remember a woman made a comment at the meeting, but I can't remember which one said it". See, e.g., Taylor, Fiske, Etcoff & Ruderman, *Categorical Bases of Person Memory and Stereotyping*, 36 J. PERSONALITY & SOC. PSYCHOLOGY 778 (1978) [hereinafter *Categorical Bases*].

discriminatory behavior. Whether realized or not,¹⁶ stereotypic beliefs create expectations about a person before that person is encountered and lead to distorted judgments about behavior. Therefore, "stereotypes become the basis for faulty reasoning leading to biased feelings and actions, disadvantaging (or advantaging) others not because of who they are or what they have done but because of what group they belong to." *Sex Bias in Work Settings*, *supra* note 11, at 271. As a result, people treat members of an ingroup preferentially, whether in assigning positive traits or in allocating rewards.¹⁷ The choice by men to hire or promote comparable men over women is the most pertinent example.¹⁸

Sex, because of its salience and visibility, is a common basis for categorization and sex stereotypes are the prod-

¹⁶ Uleman, *Consciousness and Control: The Case of Spontaneous Trait Inferences*, 13 PERSONALITY & SOC. PSYCHOLOGY BULL. 337 (1987).

¹⁷ See, e.g., Allen & Wilder, *Categorization, Belief Similarity, and Intergroup Discrimination*, 32 J. PERSONALITY & SOC. PSYCHOLOGY 971 (1975); Tajfel & Billig, *Familiarity and Categorization in Intergroup Behavior*, 10 J. EXPER. SOC. PSYCHOLOGY 159 (1974).

¹⁸ See, e.g., Heilman, *Information as a Deterrent Against Sex Discrimination: The Effects of Applicant Sex and Information Type on Preliminary Employment Decisions*, 33 ORGAN. BEHAV. & HUM. PERF. 174 (1984) [hereinafter *Information as Deterrent*]; Heilman & Stopeck, *Attractiveness and Corporate Success: Different Causal Attributions for Males and Females*, 70 J. APPLIED PSYCHOLOGY 329 (1985); Rosen & Jerdee, *Effects of Applicants' Sex and Difficulty of Job on Evaluations of Candidates for Managerial Positions*, 59 J. Applied Psychology 9 (1974); Rosen & Jerdee, *Perceived Sex Differences in Managerially Relevant Characteristics*, 4 SEX ROLES 837 (1978); "These studies [referring to work by Rosen & Jerdee] found that managers held rather consistent biases against women with respect to promotions to managerial positions, assignments to demanding jobs, and selection for supervisory training." Ruble, Cohen & Ruble, *Sex Stereotypes: Occupational Barriers for Women*, 27 AM. BEHAV. SCIENTIST 339, 348 (1984); see also references cited in Part II(B).

uct. Sex stereotypes have two features. First, they specify the attributes characteristic of each sex. Second, they dictate which behaviors are appropriate for men and women. Either can cause sex discrimination, the one based on faulty descriptive beliefs about what women are like and the other based on normative expectations about what women should be like. See Terborg, *Women in Management: A Research Review*. 62 J. APPLIED PSYCHOLOGY 647 (1977).

With regard to *descriptive beliefs*, studies of sex stereotypes have repeatedly demonstrated that men and women are viewed very differently by all kinds of people. In fact, men and women are viewed as polar opposites with respect to many personality attributes.¹⁹ With regard to achievement oriented traits, men are thought to be competent, strong, independent, active, competitive, and self-confident and women are thought to be incompetent, weak, dependent, passive, uncompetitive, and unconfident.²⁰

The traits stereotypically associated with women and men are not only different but they are seen as differentially desirable. Although each is credited with a number of positive traits, persons of both sexes concur that those traits perceived to be related to men are more valued than those related to women. See *Sex-role Stereotypes*,

¹⁹ See Broverman, Vogel, Broverman, Clarkson & Rosenkrantz, *Sex-role Stereotypes: A Current Appraisal*, 27 J. SOC. ISSUES 59 (1972); Foushee, Helmreich & Spence, *Implicit Theories of Masculinity and Femininity: Dualistic or Bipolar?* 3 PSYCHOLOGY OF WOMEN Q. 259 (1979); Ruble & Ruble, *supra* note 6.

²⁰ Societal stereotypes about women are extremely tenacious and have held despite when the investigation occurred or the type of methodology employed. See *Sex Bias in Work Settings*, *supra* note 11, at 272. A recent study found no change in attitudes toward women executives; male MBAs held as negative attitudes toward such women in the 1980s as in the 1970s. Dubno, *Attitudes Toward Women Executives: A Longitudinal Approach*, 28 ACAD. OF MGMT. J. 235 (1985).

supra note 10. Achievement, a trait associated with men, seems to be more highly valued in our society than nurturance or affiliation, traits associated with women.

Despite the fact that these perceptions have been cherished and time-honored, many of the presumed differences between males and females are based in myth. There is no support for the view that women lack the motivation to achieve nor are they less intelligent than men. See E. MACCOBY & C. JACKLIN, *THE PSYCHOLOGY OF SEX DIFFERENCES* (1974). A considerable body of literature demonstrates women have similar vocational interests, leadership abilities, problem solving abilities, and potential managerial capacities as do men.²¹ Thus, in many areas directly related to achievement, men and women are more alike than different. Yet, the view persists that there are crucial differences.

With regard to *normative beliefs*, the expectation that members of a different social category will be similar to each other can carry prescriptive or normative implications. Norms governing the approved masculine or feminine stereotypes image are clearly defined and widely agreed upon.²² Norms specify behaviors that are thought to be not only characteristic of each sex, but also desirable and encouraged. For example, females who display "womanly" traits and males who display "manly" traits are more favorably evaluated and judged more psychologi-

²¹ See Matthews, *Employment Implications of Psychological Characteristics of Men and Women in WOMEN IN THE WORK FORCE* 27 (M. Katzell & W. Byham eds. 1972); Bass, Krusell & Alexander, *Male Managers' Attitudes Toward Working Women*, 15 AM. SCIENTIST 221 (1971); Day & Stogdill, *Leader Behavior of Male and Females Supervisors: A Comparative Study*, 25 PERSONNEL PSYCHOLOGY 353 (1972).

²² See, e.g., Lunnenborg, *Stereotypic Aspects in Masculinity-Femininity Measurement*, 34 J. CONSULTING & CLINICAL PSYCHOLOGY 776 (1970); McKee & Sherriffs, *Men's and Women's Beliefs, Ideals, and Self Concepts*, 65 AM. J. SOCIOLOGY 356 (1959); Steinmann & Fox, *Male-Female Perceptions of the Female Role in the United States*, 64 J. PSYCHOLOGY 265 (1966).

cally health than those who do not.²³ Conversely, those who engage in what is perceived to be cross-sex behavior can be the victim of social sanctions. A woman who speaks aggressively, strides across the room, and wears no-nonsense clothes is perceived to be insufficiently feminine. Such discrepant individuals are psychologically "fenced off" from the rest of the group into a subcategory, often one that is negatively evaluated. In the present case, Ms. Hopkins' supporters described her behavior as outspoken, independent, self-confident, assertive, and courageous. Her detractors interpreted the same behavior as overbearing, arrogant, self-centered and abrasive.²⁴ The former descriptions fit the image of a competent partner; the latter fit into the stereotype of the "women's libber," see 618 F. Supp. at 1117; 825 F.2d at 458, or the "Iron Maiden"—a frequent subcategory for career women who are perceived to be unfeminine.²⁵ These value judgments become a critical dimension along

²³ See, e.g., Costrich, Feinstein, Kidder, Marecek & Pascale, *When Stereotypes Hurt: Three Studies of Penalties for Sex-role Reversals*, 11 J. EXPER. & SOC. PSYCHOLOGY 520 (1975) [hereinafter *When Stereotypes Hurt*] and n.25, *infra*.

²⁴ Because categorization influences one's interpretation of an individual's action, the same behavior can be reinterpreted in light of one's stereotypes. See *Categorical Bases*, *supra* note 15.

²⁵ R. KANTER, *MEN AND WOMEN OF THE CORPORATION* 233-237 (1977) [hereinafter KANTER]; Brown & Geis, *Turning Lead into Gold: Evaluations of Men and Women Leaders and the Alchemy of Social Consensus*, 46 J. PERSONALITY & SOC. PSYCHOLOGY 811 (1984) [hereinafter *Evaluation of Men & Women Leaders*]; Deaux & Lewis, *The Structure of Gender Stereotypes: Interrelationships among Components and Gender Label*, 46 J. PERSONALITY & SOC. PSYCHOLOGY 991 (1984); Kristal, Sanders, Spence & Helmreich, *Inferences about the Femininity of Component Women and their Implications for Likeability*, 1 SEX ROLES 33 (1975); Prather, *Why Can't Women be More Like Men: A Summary of the Sociopsychological Factors Hindering Women's Advancement in the Professions*, 15 AM. BEHAV. SCIENTIST 172 (1971); *When Stereotypes Hurt*, *supra* note 23; Wiley & Eskilson, *Coping in the Corporation: Sex Role Constraints*, 12 J. APPLIED SOC. PSYCHOLOGY 1 (1982) [hereinafter *Coping in the Corporation*].

which others are evaluated. This is especially the case where the behavior is distinctly contrary to the stereotyped expectation, as when a woman uses profanity.²⁶

In sum, descriptive stereotypes characterize women in a manner that undermines their competence and effectiveness; normative stereotypes cast as deviants those women whose behavior seems inappropriately masculine. Each has potentially detrimental and discriminatory consequences for women who are achievement-oriented.

B. Sex Stereotypes Have Demonstrably Negative Effects on Women in Work Settings.

A multitude of studies has shown that providing precisely the same information about job qualifications or job performance and merely varying the identity associated with the information as either male or female leads to differential and negative evaluations of the woman or her work.²⁷ This is true when women apply for jobs or seek promotions once on the job.

When an individual first seeks entry into an organization, because of the visibility of sex as an attribute,

²⁶ Fiske & Neuberg, *A Continuum of Impression Formation from Category-Based to Individuating Processes: Influences of Information and Motivation on Attention and Interpretation* in 23 *ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY* (M. Zanna ed. in press) [hereinafter Fiske & Neuberg]; Higgins & Bargh, *Social Cognition and Social Perception*, 38 *ANN. REV. PSYCHOLOGY* 369 (1987) [hereinafter Higgins & Bargh].

²⁷ See, e.g., Dipboye, Arvey & Terpstra, *Sex and Physical Attractiveness of Rates and Applicants as Determinants of Resume Evaluations*, 62 *J. APPLIED PSYCHOLOGY* 288 (1977); Dipboye, Fromkin & Wiback, *Relative Importance of Applicant Sex, Attractiveness, and Scholastic Standing in Evaluation of Job Applicant Resumes*, 60 *J. APPLIED PSYCHOLOGY* 39 (1975); Terborg & Ilgen, *A Theoretical Approach to Sex Discrimination in Traditionally Masculine Occupations*, 13 *ORG. BEHAV. & HUM. PERF.* 352 (1975); *When Stereotypes Hurt*, *supra* note 23; Zickmund, Hitt & Pickens, *Influence of Sex and Scholastic Performance on Reactions to Job Applicant Resumes*, 63 *J. APPLIED PSYCHOLOGY* 252 (1978).

sex stereotypes are apt to be a predominant element in decisionmaking. The attributes ascribed to women are not those believed essential for work success, e.g., achievement orientation, and, thus, "sex discrimination has been repeatedly demonstrated in employee selection processes," *Sex Bias in Work Settings*, *supra* note 11, at 280, most particularly when women apply for traditionally male positions.²⁸ Not only are males judged preferable to females and evaluated more favorably in selection deliberations, but they are likely to be offered higher starting salaries and higher level positions.²⁹ Such differential evaluations of applicants for managerial positions are greater, as in this case, when jobs are more demanding and challenging. See *Career Progress of Women*, *supra* note 13.

Once on the job, sex-stereotypic attributes bias the evaluation of women's work performance. Women's achievements are perceived in a way which fit with stereotypic ideas regardless of whether facts about an individual woman objectively support the perception. As a result, accomplishments by women are significantly more likely to be discounted than the same accomplishments by men because the successful performance of women is attributed to ephemeral or unstable causal factors. Performance of women in traditionally male jobs is very often devalued simply because they are women,³⁰ or because their highly accomplished performance is attributed to good luck or hard work, rather

²⁸ See Olian, Schwab & Haberfield, *The Impact of Applicant Gender Compared to Qualifications on Hiring Recommendations*, 40 *ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES* 180 (1988) and *Career Progress of Women*, *supra* note 13 for reviews.

²⁹ See Dipboye, Arvey & Terpstra, *supra* note 27; Terborg & Ilgen, *supra* note 27. These discriminatory behaviors are evident even among people who deny any prejudice toward women in management. See *Evaluation of Men and Women Leaders*, *supra* note 25, at 817.

³⁰ See *Sex Bias in Work Settings*, *supra* note 11; *Sex Effects*, *supra* note 13.

than sheer ability and competence.³¹ That these evaluations are not based on competence results in judgments detrimentally affecting the degree to which organizational rewards are accorded women and impedes career progress.³²

Even if descriptive stereotypes are not operative, it is likely that other stereotypic processes will lead to negative consequences. Most importantly, normative expectations can result in detrimental evaluations. Women pursuing traditionally masculine occupations are likely to be penalized for their violation of sex-related expectations no matter what their background or qualifications and they are often forced to cope with negative reactions to their "out-of-role" behaviors.³³ This might explain why petitioner refused to make Ms. Hopkins a partner despite the fact that she brought in \$40 million worth of business.

³¹ See Deaux & Emswiller, *Explanation of Successful Performance on Sex-Linked Tasks: What is Skill for the Male is Luck for the Female*, 29 J. PERS. & SOC. PSYCHOLOGY 80 (1974); Taynor & Deaux, *Equity and Perceived Sex Differences: Role Behavior as Defined by the Task, the Mode, and the Action*, 32 J. PERS. & SOC. PSYCHOLOGY 381 (1975). Individuals who hold negative attitudes toward the presence of women in managerial positions are particularly likely to show such biases. Garland & Price, *Attitudes Toward Women in Management and Attributions for their Success and Failure in a Managerial Position*, 59 J. APPLIED PSYCHOLOGY 705 (1977).

³² Heilman & Guzzo, *The Perceived Cause of Work Success as a Mediator of Sex Discrimination in Organizations*, 21 ORIG. BEHAV. & HUM. PERF. 346 (1978).

³³ For example, both women and men are evaluated more favorably when their leadership activities consist of sex appropriate behaviors, that is, when a female manager is interpersonally oriented and a male manager is task oriented. See Bartol & Butterfield, *Sex Effects in Evaluating Leaders*, 61 J. APPLIED PSYCHOLOGY 446 (1976); *Coping in the Corporation*, supra note 25; Jago & Vroom, *Sex Differences in the Incidents & Evaluations of Participative Leader Behavior*, 67 J. APPLIED PSYCHOLOGY 776 (1982); Rosen & Jerdee, *The Influence of Sex-Role Stereotypes on Evaluations of Male and Female Supervisory Behavior*, 57 J. APPLIED PSYCHOLOGY 44 (1973).

Reactions to women's out-of-role behavior studied in a series of laboratory studies uniformly showed that women who violate norms of feminine passive-dependency are penalized. They were rated as less popular and as more poorly adjusted than women who abided by the behaviors believed appropriate to their sex.³⁴ In the classic study of men and women in a large corporation, women were often considered in two distinct categories—women and managers. As women, they were measured by how well they filled the management roles; as managers they were expected to conform to men's images of womanhood. KANTER, *supra* note 25. These two categorizations are perceived as incompatible.³⁵ Paradoxically, as with Ms. Hopkins, women in non-traditional fields are evaluated negatively if they do their jobs well.

In sum, sex stereotypes place women into a "double-bind" situation. If they are viewed "as women" they are frequently denied access to high power positions because their presumed attributes cause them to appear incapable or their performance is ascribed to something other than competence. This is particularly the case if coworkers convey, even in subtle ways, their lack of support for a female leader.³⁶ If, however, they are perceived as advancement.

³⁴ *When Stereotypes Hurt*, supra note 23. Women who perform competently at traditionally male tasks are disliked and ostracized. See Hagen & Kahn, *Discrimination Against Competent Women*, 5 J. APPLIED SOC. PSYCHOLOGY 362 (1975).

³⁵ Schein, *Relationships Between Sex-Role Stereotypes and Requisite Management Characteristics Among Female Managers*, 60 J. APPLIED PSYCHOLOGY 340 (1975); Schein, *The Relationship Between Sex-Role Stereotypes and Requisite Management Characteristics*, 57 J. APPLIED PSYCHOLOGY 95 (1973).

³⁶ See *Evaluation of Men & Women Leaders*, supra note 25. This might explain why those supporters of Ms. Hopkins, who originally filled in their evaluations individually and in private, then withdrew their support after they found out the negative evaluations of her detractors. Thus, her inconstant supporters were subject to the same kind of stereotypic dynamics as her detractors.

gaging in "masculine" behaviors deemed essential for the job, they are considered to be abrasive, or maladjusted. In many cases, then, the achievement oriented woman is caught—whatever her behavior, it bodes ill for her career

III. THE CONDITIONS THAT PROMOTE STEREOTYPING WERE PRESENT IN PETITIONER'S WORK SETTING

At least three significant factors promote stereotyping in social contexts, including employment settings: (1) The rarity of the stereotyped individual within the evaluation setting; (2) the ambiguity of criteria used to make an evaluation; and (3) the paucity of information available to evaluators. All those factors were present in this case.

1. *Rarity of the Individual.* When there are very few employees who are members of a particular group, those employees are considerably more likely to be stereotyped than if the group of which they are a part is represented in large numbers. Singular or rare individuals attract more attention, are evaluated more extremely, are more likely to be perceived as enacting stereotyped roles, and are believed to have a greater, sometimes more disruptive, impact on the group.

A member of a group comprising 15% or less of the total work force is considered to be in a setting in which members of the minority have solo status or its psychological equivalent.³⁷ Petitioner's setting meets this criterion. Ms. Hopkins was the one female in a class of 88 partner candidates in a firm of 662 partners, only seven of whom were women.³⁸ In such cases, discriminatory outcomes

³⁷ See KANTER, *supra* note 25, at 206-242. The particular immediate setting matters especially. If 35% of the company's work force is females, all but one being secretaries, the one female manager will have solo status. *Id.*

³⁸ Nothing significant appears to have changed at Price Waterhouse. As of July 1, 1988, petitioner will have 24 women partners out of a total of 898. See Brief for Petitioner at n.1.

are demonstrably more likely. One study has shown that evaluations of women applicants for a managerial position are significantly less favorable when the applicant pool contains 25% or fewer females. Heilman, *The Impact of Situational Factors on Personnel Decisions Concerning Women: Varying the Sex Composition of the Applicant Pool*, 26 ORIG. BEHAV. AND HUM. PERF. 174 (1984). These evaluations are likely to be even more harshly negative if the person is perceived to come from a negative social category, *e.g.*, pushy career woman.

The only woman in an otherwise all-male setting attracts attention simply by being different and more noticeable.³⁹ Being unusual exaggerates other people's perceptions, especially when related to a stereotyped category like sex.⁴⁰ This is particularly true, as here, where the person evaluated is highly visible and unusually productive.

Evaluations of members of a different group, compared to evaluations of members of one's own group, are likely to be exaggerated and extreme.⁴¹ Accordingly, if one is a male partner and has limited experience with

³⁹ Kanter, *supra* note 25, at 206-242; Crocker & McGraw, *What's Good for the Goose is not Good for the Gander: Solo Status as an Obstacle to Occupational Achievement for Males and Females*, 27 AM. BEHAV. SCIENTIST 357 (1982); Wolman & Frank, *The Solo Woman in a Professional Peer Group*, 45 AM. J. ORTHOPSYCHIATRY 164 (1975).

⁴⁰ See McArthur, *What Grabs You? The Role of Attention in Impression Formation and Causal Attribution in 1 SOCIAL COGNITION: THE ONTARIO SYMPOSIUM* 201 (T. Higgins, C. Herman & M. Zanna eds. 1981); Taylor & Fiske, *Salience, Attention and Attribution: Top of the Head Phenomena*, 11 ADV. EXPERIMENTAL & SOC. PSYCHOLOGY 249 (1978).

⁴¹ See, *e.g.*, Allen & Wilder, *Categorization, Belief Similarity, and Intergroup Discrimination*, 32 J. PERSONALITY & SOC. PSYCHOLOGY 971 (1975); Linville & Jones, *Polarized Appraisals of Outgroup Members*, 38 J. PERSONALITY & SOC. PSYCHOLOGY 689 (1980).

female managers, one is likely to evaluate any given female manager in a more extreme way. Impressions are even more likely to be polarized when the person evaluated has solo or rare status.⁴²

Another effect of rarity is that individuals such as Ms. Hopkins are likely to be seen as enacting stereotypic roles. The increased attention to such persons causes observers to form more "packaged" stereotypic impressions than they otherwise would.⁴³ This phenomenon, called "role encapsulation," see KANTER, *supra* note 25, at 230, leads the majority to isolate the minority from the otherwise homogeneous majority culture.

Lastly, the solo or rare individual is perceived as having greater impact on the group than do members of the majority. They are perceived as determining the nature of interactions in which they participate and as a disruptive force. This is true even when the actual behavior of the rare individual is no different from the rest of the group.⁴⁴

2. *Ambiguity of Evaluative Criteria.* The second factor that contributes to the potential for stereotyping is the subjectivity or ambiguity of the criteria used for evaluation. As in this case, interpersonal skills would be more vulnerable to stereotypic judgments than would garnering a certain amount of business income because of the greater ambiguity of the former. This is not to say that subjective criteria violate Title VII and should not be used in personnel judgments.⁴⁵ Rather, the point

⁴² See FISKE & TAYLOR, *SOCIAL COGNITION* 184-190 (1984); Taylor, *supra* note 11, at 89-97.

⁴³ See KANTER, *supra* note 25, at 211, 230-237; Taylor, *supra* note 11, at 89; *Categorical Bases*, *supra* note 15.

⁴⁴ McArthur, *supra* note 40; Taylor & Fiske, *supra* note 40.

⁴⁵ Well-developed performance criteria using subjective evaluation devices are not necessarily influenced by stereotypic attitudes or behavior. Performance appraisal systems, based on a thorough

is that ambiguous criteria are easier to distort on the basis of stereotypes. This principle has been specifically demonstrated with sex stereotyping. One review of 58 studies of sex biases in performance evaluations concluded that "the greater the amount of inference required in the evaluation situation, the more likely it is that evaluation bias will be found." *Sex Effects*, *supra* note 13, at 170. They found evaluations of qualifications for hiring and promotion as particularly bias-prone.

3. *Paucity of Information.* Stereotyping is most likely when decisionmakers have available a paucity of information. Paucity can be defined as (1) information that is relatively limited beyond some convenient category like sex; (2) ambiguous information that could be interpreted in multiple ways; and (3) information about the individual that is irrelevant to the judgment the evaluator must make.

Not surprisingly, research corroborates the common-sense notion that people are more likely to stereotype another person when they have little information about the other. This is particularly true when the scant information seems to fit the stereotypic category.⁴⁶

analysis of job requirements can be reliable, job-related, and fair. See Brief for *Amicus curiae* American Psychological Association, *Watson v. Fort Worth Bank & Trust*, No. 86-6139. In addition, instructing raters that skills and outcomes rather than personality or mannerisms are the proper basis for performance appraisal as well as organizational policies that unambiguously communicate the inappropriateness of stereotypic bias can result in unbiased evaluations. Petitioner failed to take these steps. See Part IV, *infra*.

⁴⁶ Locksley, Borgida, Brekke & Hepburn, *Sex Stereotypes and Social Judgment*, 39 J. PERSONALITY & SOC. PSYCHOLOGY 821 (1980); Locksley, Hepburn & Ortiz, *Social Stereotypes and Judgments of Individuals: An Instance of the Base Rate Fallacy*, 18 J. EXPER. SOC. PSYCHOLOGY 23 (1982); Rasinski, Crocker & Hastie, *Another Look at Sex Stereotypes and Social Judgments: An Analysis of the Social Perceiver's Use of Subjective Probabilities*, 49

One primary form of ambiguity is mixed behavior, *i.e.*, some consistent and some inconsistent with the evaluator's stereotype. For example, when an evaluator categorizes a female professional as an "Iron Maiden" and she behaves in ways that could be interpreted as supporting the stereotype, *e.g.*, she is tough and assertive, as well as in ways that do not, *e.g.*, she is warm and funny, the evaluator tends to make stereotypic judgments, even though the information available is balanced.⁴⁷

Lastly, stereotyping is more likely when the evaluator appears to have sufficient information but the information provided is, in fact, irrelevant to the particular judgment the evaluator is asked to make. For example, that a female professional wears dark suits and little makeup is irrelevant to her ability to function as a partner. But, such facts provide the illusion of having gathered enough information to make an informed decision and, despite the logical irrelevance of such information, the irrelevantities seem to reinforce the stereotype. A variety of studies have examined responses to men and women described by additional information that was unrelated both to sex stereotypes and the relevant judgment, *e.g.*, a score on a test of low validity with regard to suitability for a job. Stereotypic responses were made in each case and the irrelevant information was unable to undercut the category-based stereotype.⁴⁸ This phenomenon occurs,

J. PERSONALITY & SOC. PSYCHOLOGY 317 (1985). See 618 F. Supp. at 1118: "The Policy Board gave great weight to the negative views of individuals who had very little contact with the plaintiff."

⁴⁷ See, *e.g.*, Darley & Fazio, *Expectancy Confirmation Processes Arising in the Social Interaction Sequence*, 35 AM. PSYCHOLOGIST 867 (1980); Deaux & Major, *Putting Gender into Context: An Interactive Model of Gender-Related Behavior*, 94 PSYCHOLOGICAL REVIEW 369 (1987).

⁴⁸ See, *e.g.*, Dipboye, Fromkin & Wiback, *supra* note 27; Heneman, *Impact of Test Information and Applicant Sex on Applicant Evaluations in a Selection Simulation*, 62 J. APPLIED PSYCHOLOGY

as here, most frequently in cases where such strong category labels as sex are involved.⁴⁹

IV. ALTHOUGH PETITIONER WAS FOUND TO HAVE TAKEN NO EFFECTIVE STEPS TO PREVENT ITS DISCRIMINATORY STEREOTYPING OF RESPONDENT, METHODS ARE AVAILABLE TO MONITOR AND REDUCE THE EFFECTS OF STEREOTYPING

The district court found, and the court of appeals affirmed, that petitioner:

never took any steps in its partnership policy statement or in the evaluation forms submitted to partners to articulate a policy against discrimination or to discourage sexual bias. The Admissions Committee never attempted to investigate whether any of the negative comments concerning the plaintiff were based on a discriminatory double standard.

618 F. Supp. at 1118-1119. Because stereotypic categorization is a basic feature of human thinking, *amicus* does not suggest that stereotypic beliefs can be eliminated. However, people can be taught to recognize categorization, influenced to resist evaluating individuals in categorical terms, and taught to break the link between categorization processes and judgmental consequences, thus reducing the likelihood that stereotypic thinking will be transformed into discriminatory action.

Three conditions contribute to the reduction of stereotypic thought and discriminatory action: (1) Additional information; (2) increased attention to that information and; (3) motivational incentives that support increased attention and indicate consensual disapproval of stereotyping. None of these conditions, by itself, is suffi-

524 (1977); Locksley, Borgida, Brekke & Hepburn, *supra* note 46; Pheterson, Kiesler & Goldberg, *supra* note 10; Rasinski, Crocker & Hastie, *supra* note 46.

⁴⁹ See, *e.g.*, Fiske & Neuberg, *supra* note 26; Higgins & Bargh, *supra* note 26.

cient but must be present in concert.⁵⁰ Nevertheless, petitioner failed to employ any of these conditions.

Information about a particular person can undermine the use of stereotypes, particularly if that information is inconsistent with the category (like sex) otherwise being used on which to base a judgment.⁵¹ "By and large, the situations in which differential treatment on the basis of sex does not occur are the ones in which information clearly relevant to and crisply diagnostic of the target decision has been provided to the decision maker." *Information as Deterrent*, *supra* note 18, at 185.⁵² Thus, stereotypes are less likely to affect evaluative judgments and predictions when employers provide specific behavioral information about employees.⁵³

⁵⁰ For example, simply providing additional information can lead to the creation of subcategories of the stereotype, *e.g.*, the "Iron Maiden." See text at nn. 22-26.

⁵¹ See Deaux & Lewis, *supra* note 25; *Information as Deterrent*, *supra* note 18; Locksley, Borgida, Brekke & Hepburn, *supra* note 46; Locksley, Hepburn & Ortiz, *supra* note 46; Pheterson, Kiesler & Goldberg, *supra* note 10; Rasinski, Crocker & Hastie, *supra* note 46. For a review see Fiske & Neuberg, *supra* note 26.

⁵² Not coincidentally, the evaluation settings in which differential treatment has been discovered are ones in which either little more than sex category information is made salient, *see, e.g.*, *Effects of Applicants' Sex*, *supra* note 18, the additional information provided is not definitive but is ambiguous in its implications, *see, e.g.*, Heneman, *Impact of Test Information and Applicant Sex on Applicant Evaluations in a Selection Simulation*, 62 J. APPLIED PSYCHOLOGY 524 (1977), or the additional information provided is weakly, if at all, related to the target decision. See, *e.g.*, Dipboye, Fromkin & Wiback, *supra* note 27.

⁵³ Borgida, Locksley & Brekke, *Social Stereotypes and Social Judgment in PERSONALITY, COGNITION, AND SOCIAL INTERACTION* 153 (N. Cantor & J. Kihlstrom eds. 1981); Locksley, Borgida, Brekke & Hepburn, *supra* note 46. Many behavioral evaluation systems are readily available. See, *e.g.*, B. SCHNEIDER & N. SCHMITT, *STAFFING ORGANIZATIONS* (2d ed. 1986).

Because information is rarely sufficient to prevent stereotyping, particularly if the category in question, like sex, is widely used and readily accessible, employers should attempt to ensure that evaluators pay attention both to the forming of erroneous impressions and to the particularized information that will temper the tendency to stereotype. Both sufficient time and concentrated attention are necessary to undercut stereotyping if information inconsistent with the stereotype is to have an impact on the evaluator.⁵⁴

As important, employers must motivate evaluators to avoid stereotypical judgments. If individuals are motivated to be accurate in their decisions and to base those decisions on individual characteristics, they will be less likely to use stereotypic categories.⁵⁵ At least three types of organizational incentives encourage people to avoid stereotyping.

First, interdependence undercuts stereotyping and encourages more accurate, particularized impressions.⁵⁶ Thus, an organization that makes teamwork explicit, makes promotions depend on group products, and em-

⁵⁴ See Burnstein & Schul, *The Information Basis of Social Judgments: Operations in Forming Impressions of Other Persons*, 18 J. EXPER. SOC. PSYCHOLOGY 217 (1982); Jamieson & Zanna, *Need for Structure in Attitude Formation and Expression in ATTITUDE STRUCTURE AND FUNCTION* (A. Pratkanis, S. Breckler & A. Greenwald eds. in press). For a review see Fiske & Neuberg, *supra* note 26.

⁵⁵ See Fiske & Neuberg, *supra* note 26; Higgins & Bargh, *supra* note 26; Kruglanski, *Motivations for Judging and Knowing: Implications for Causal Attribution* in 2 HANDBOOK OF MOTIVATION AND COGNITION (E. Higgins & R. Sorrentino eds. in press).

⁵⁶ See M. SHERIF & C. SHERIF, *GROUPS IN HARMONY AND TENSION* (1953); Deutch, *An Experimental Study of the Effects of Cooperation and Competition upon Group Process*, 2 HUM. RELATIONS 199 (1949); Neuberg & Fiske, *Motivational Influences on Attention, and Individuating Processes*, 53 J. PERSONALITY & SOC. PSYCHOLOGY 431 (1987).

phasizes supervisors' responsibilities for their subordinates' success can reduce stereotyping.

Second, if decisionmakers are reminded that the subordinate's future depends on their judgments and if the employer emphasizes accuracy, then decisionmakers make less stereotyped, more particularized evaluations.⁵⁷ Such considerations as decision accuracy must be salient to the decisionmaker in the immediate context of the evaluation, not just, as here, in a little known policy statement.

Finally, the opinion of a third party to the evaluation process, particularly that of a superior or colleague, can exert a major influence on the decisional process and the decision itself. For example, in evaluating a leader's performance, group members rated a female leader as more effective when her position had been specifically legitimized by superiors. See *Evaluations of Men & Women Leaders*, *supra* note 25. Similarly, if people are held accountable and anticipate that they will have to justify their assessments, they show greater accuracy and exhibit fewer overconfident generalizations.⁵⁸ These salutary outcomes will occur, however, only when the third parties are known to discourage stereotypical thinking. In contrast, an evaluator may choose to endorse stereotypic charact-

⁵⁷ See, e.g., Freund, Kruglanski & Schpitizajzen, *The Freezing and Unfreezing of Impression Primacy: Effects of the Need for Structure and the Fear of Invalidity*, 11 PERSONALITY & SOC. PSYCHOLOGY BULL. 479 (1985); Neuberg & Fiske, *supra* note 56; Touhey, *Role Perception and the Relative Influence of the Perceiver and the Perceived*, 87 J. SOC. PSYCHOLOGY 213 (1972).

⁵⁸ See Mayseless & Kruglanski, *What Makes You So Sure? Effects of Epistemic Motivations on Judgmental Confidence*, 39 ORGANIZATIONAL BEHAV. & HUM. DECISION PROCESSES 162 (1987); Tetlock, *Accountability and Complexity of Thought*, 45 J. PERSONALITY & SOC. PSYCHOLOGY 74 (1983); Tetlock, *Accountability and the Perseverance of First Impressions*, 46 SOC. PSYCHOLOGY Q. 285 (1983); Tetlock & Kim, *Accountability and Judgment Processes in a Personality Prediction Task*, 52 J. PERSONALITY & SOC. PSYCHOLOGY 700 (1987).

erizations if those judgments are believed, as in petitioner's case, to be compatible with those of peers or superiors.

In sum, although stereotyping is pervasive, it is not inevitable. Natural tendencies to evaluate women negatively on the basis of their categorical membership can be overcome by systematic organizational interventions.

CONCLUSION

There is substantial and convergent social science evidence that stereotyping of women, particularly in the evaluation of those who seek high status in the workplace, exists and negatively affects their chances for selection and promotion. The methods used by Dr. Fiske, respondent's expert, to analyze the evidence of adverse stereotypic judgments made by petitioner's partners are standard in the field. Researchers regularly examine natural and simulated settings to determine the extent to which those settings manifest the antecedent conditions and behavioral indicators that result in stereotypic judgments. In such an examination it is customary to scrutinize the verbal record of decisionmakers' comments, descriptions, ratings, and behavior regarding the individual evaluated. This is precisely what Dr. Fiske did. See Tr. 615.

Current research and theory supports Dr. Fiske's conclusions that the conditions that promote, and the indicators that evidence, stereotyping appear to have been present at Price Waterhouse, which failed to monitor and take appropriate action to diminish stereotyping. In light of that research, the record supports the conclusion that the adverse consequences suffered by respondent were the natural and foreseeable outcome of the petitioner's conduct.

For all the foregoing reasons, *amicus* respectfully requests this Court to affirm the decision of the Court of Appeals for the District of Columbia Circuit insofar as that decision relies on a finding of stereotypic thinking

on the part of petitioner, its translation into discriminatory action, and petitioner's failure to provide a setting in which the discriminatory consequences of stereotyping would be substantially reduced.

Respectfully submitted,

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